

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign the following contract on behalf of the Arts and Culture Department to present the following group at the FY05 World On A String International Guitar Festival, to be held at the Chamizal National Memorial, as recommended by the Arts & Culture Department's Advisory Board and staff.

1. ICM Artists, Ltd. for Eliot Fisk & Paco Pena; one performance on Sunday, April 17, 2005; cost of \$12,500.

ADOPTED THIS 14th day of September, 2004.


THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



John F. Nance
Assistant City Attorney

APPROVED AS TO CONTENT:



Alejandrina Drew
Director, Arts and Culture Dept.

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

CONTRACT

This Contract is made and entered into this 14th day of September, 2004 by and between the **CITY OF EL PASO**, Texas, a municipal corporation, hereinafter referred to as the “City,” and **ICM ARTISTS, LTD.**, hereinafter referred to as the “Contractor” as the designated representative for **ELIOT FISK & PACO PENA**, hereinafter referred to as the “Artist.”

WHEREAS, the City desires to expose the residents of the City of El Paso to the different forms of art, including those presented by the artist; and

WHEREAS, the Contractor is interested in promoting the arts and providing an opportunity for art appreciation and exposure to the residents of the City of El Paso; and

WHEREAS, the Contractor has the authority to promote, represent and contract for the artist; and

WHEREAS, the City desires the Contractor to render such professional services in conjunction with activities conducted by the City’s Arts and Culture Department,

NOW, THEREFORE, the parties do hereby agree as follows:

1. The Contractor shall arrange for the Artist to perform the following services under the terms and conditions hereinafter stated:

- a. Serve as guest artists during the City of El Paso Arts and Culture Department’s **World On A String International Guitar Festival** scheduled for 7:30 p.m., Sunday, April 17, 2005 at the Chamizal National Memorial. The Chamizal National Memorial is a National

Park Service and is located at 800 San Marcial, El Paso, Texas. The program will be two (2) hours and will include a 15-minute intermission. Starting time can be delayed up to 10 to 15 minutes at the discretion of the City's Arts and Culture Department.

- b. Contractor shall provide such properties, stage scenery, and special effects as deemed necessary for the performances.
- c. Contractor shall notify the City of El Paso Arts and Culture Department as to travel and lodging arrangements no later than 30 days prior to the performance. Upon arrival in El Paso, Contractor shall notify the Arts and Culture Department's Technical Coordinator at office phone (915) 541-4481.
- d. The parties agree that all activities taking place at the Chamizal National Memorial shall take place within an eight-and-one-half hour contiguous time period, to include a thirty (30) minute lunch period. Activities shall include, but not be limited to, load-in, technical preparation, rehearsals, performances and load-out. If such activities cannot be carried out in an eight-and-one-half hour time period, Contractor will notify the City's Arts and Culture Department in order to schedule an extra day for these activities.
- e. Load-in, set-up and sound check are to be completed no later than 7:00 p.m. April 17, 2005.

- f. Strike and load-out are to be completed no later than one hour following the completion of the performance on Sunday, April 17, 2005.
- g. The parties agree to comply to all rules and regulations of the Chamizal National Memorial.
- h. Contractor will not sell merchandise to the general public.

2. In consideration for such services, the City shall pay the Contractor TWELVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$12,500), flat, guarantee and inclusive. Payments shall be rendered in accordance with the City's purchasing policies and procedures. Payment shall be authorized only after the performance has been completed.

3. The City shall provide the following equipment and technical staff for the performances:

- a. National Park Service and City of El Paso's Arts and Culture Department staff for load-in, set-up, strike, and load-out; and
- b. Professional sound and lighting staffed by National Park Service personnel. **No unauthorized person(s) shall be allowed backstage or in the sound/light area at any time;**
- c. Refreshments for the Artist and technical staff backstage;
- d. Local transportation from airport, hotel, theatre and back;
- e. Front-of-house personnel, event management, box office functions and publicity;

- f. Two (2) dressing rooms, clean and adequately lighted, with mirrors, costume racks, tables, chairs, running water and toilet facilities;
- g. Ten (10) complimentary tickets to be held until 6:45 p.m., Sunday, April 17, 2005, after which time they will be released to the general public;
- h. Local information, including but not limited to, directions and accommodation information.

4. Contractor warrants that he is duly authorized to act and contract on behalf of the Artist.

5. It is expressly understood and agreed by and between the parties that Contractor is hired and engaged as an Independent Contract and is not an officer, agent or employee of the City. Nothing herein shall be construed as creating the relationship of the employer and employee between the City and the Contractor. The City shall not be subject to any obligations or liabilities of Contractor incurred in the performance of this Contract.

6. The Contractor shall and does agree to indemnify and hold the City harmless for any and all claims, liabilities and obligations directly or indirectly arising out of, caused by, or resulting from, in whole or in part, (1) the performance of the artist, or (2) any act, omission or breach on the part of the Contractor or Artist.

7. If the Contractor or Artist does not provide the services herein mentioned for reasons other than accidents, riots, strikes, epidemics, or acts of God, the Contractor

shall be responsible to the City for any actual damages incurred by the City relating to this Contract, including, but not limited to, promotional expenses.

8. For the purpose of this Contract, **THE CONTRACTOR SHALL BE HELD RESPONSIBLE FOR OBTAINING APPROPRIATE PERMISSION TO USE AND INCORPORATE COPYRIGHTED MATERIALS INTO THE CONCERT.** In addition, the Contractor shall indemnify, defend, and hold the City harmless from any claims or causes of action which might arise from use of any material.

9. **Artist is solely responsible for safeguarding and providing any security that Contractor deems necessary for their theatrical properties, costumes, instruments, equipment and any other personal property. Contractor acknowledges that the City shall not be held liable for theft, loss, or damage to any of these items. Contractor acknowledges that City will not provide any insurance for the personal property of the Artist and is not responsible for any damage to Artist's property regardless of the cause.**

10. Contractor specifically acknowledges that, in its capacity as an independent contractor, it has NOT been provided with worker's compensation insurance or other insurance coverage regularly provided by the City to its regular employees.

11. In the event that a party to this Contract fails to comply with any or all of the terms specified herein, written notice shall be sent to the non-compliant party stating the extent of non-compliance and providing ten (10) days within which to cure such non-compliance. Any failure to cure such non-compliance may result in termination of this Contract.

12. Contractor agrees to provide, at its own cost, the following advertising and promotional material to be forwarded to the City's Arts and Culture Department with the signed contract:

- a. Description of program, program notes, and biography;
- b. One (1) complete and up-to-date press packet, to include logos, motifs, and typefaces, if any;
- c. Eight (8) black and white glossy photographs, suitable for publication (color preferred);
- d. One (1) color digital image (if available);
- e. Two (2) color slides (if available);
- f. One (1) broadcast quality videotape (any format), if available;
- g. Four (4) compact discs.

If Contractor does not have all the above items of advertising material available for distribution, Contractor will notify the Director of the City's Arts and Culture Department in writing and within thirty (30) days of the signing of this Contract, specifying the items which are unavailable. Failure to notify the Director of the Arts and Culture Department indicates that all such material is available and will be supplied to the City's Arts and Culture Department.

13. Contractor shall furnish to the Technical Coordinator of the City's Arts and Culture Department, in duplicate and ninety (90) days prior to the performance or with the signed Contract, all technical information and requirements necessary to present the Artist. Technical information shall include, but not be limited to, stage diagram, sound and microphone requirements, light plot, required equipment, crew requirements,

number of people traveling, luggage, technical and rehearsal schedule. The City, at its discretion, will provide those items listed which are necessary for the presentation of the Artist. Neither the City nor the National Park Service shall be held responsible for obtaining any items not listed in the attached technical rider. Contractor specifically understands that all scheduling and technical matters are subject to National Park Service staff approval.

14. Contractor may contact the Arts and Culture Department directly to discuss sales of Contractor's CDs. The Contractor shall negotiate the appropriate sales commission (10%) and state tax (8.25%) with the Arts and Culture Department. Contractor specifically agrees to abide by the Arts and Culture Department pricing policies established for such products.

15. Contractor shall be responsible for any damage to any facilities or equipment caused by the Contractor or Artist. In the event of any such damage, the Contractor shall pay any and all costs or repairs and or replacement. The City through its Arts and Culture Department will furnish the Contractor with a detailed written statement of any such damages and cost of repair, normal wear and tear excepted, within sixty (60) days of the time of the damage.

16. The Artist shall, at all times, retain sole artistic control over the performance and other residency activities.

17. The City agrees that the engagement shall not be a joint performance nor shall any assisting artists perform without the prior written consent of the Artist.

18. Only members of the Artist, authorized Artist's technical personnel and members of the City or Chamizal National Memorial Theater Staff shall be permitted

backstage during the performance. Unauthorized persons shall not be admitted backstage during the performance due to the amount of space needed for safety precautions and for the Contractor's and Artist's protection.

19. The parties mutually agree that the technical rider, attached hereto as Exhibit A, is incorporated by reference and made a part of this Agreement for all purposes.

20. This Contract constitutes and expresses the entire agreement of the parties in reference to the services of the Contractor and Artist for the City and in reference to any of the matters provided for or discussed or mentioned in reference to the providing of such services, all promises, representations and understandings relative hereto being herein merged.

21. Any notices required under this Contract shall be sufficient if sent by certified mail, return receipt requested, to the parties as follows

CITY: City of El Paso
Attention: Mayor
2 Civic Center Plaza, 10th Floor
El Paso, TX 79901-1196

COPY TO: Arts and Culture Department
2 Civic Center Plaza
6th Floor
El Paso, TX 79901-1196

CONTRACTOR: ICM Artists, Ltd.

or to such other addresses as the parties may indicate to each other in writing.

22. Regardless of any other provision in this Contract, this Contract does not become binding on either party until signed by the Contractor and the Mayor or the Mayor pro-tem of the City of El Paso.

23. Contractor understands and acknowledges that this Contract must be signed and returned to the City's Arts and Culture Department at 2 Civic Center Plaza, 6th Floor, El Paso, TX 79901-1196.

24. This Contract constitutes and expresses the entire agreement of the parties hereto in reference to the services of the Contract for the City and in reference to any of the matters herein provided for or herein discussed or mentioned in reference to the providing of such services, all promises, representations, and understandings relative hereto being herein merged.

25. The validity, construction and effect of this Contract shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

(SIGNATURES BEGIN ON FOLLOWING PAGE)
WITNESS THE FOLLOWING SIGNATURES AND SEAL:

THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

CONTRACTOR:

Print Name: _____

Signature: _____

Title: _____

APPROVED AS TO FORM:

John Nance
Assistant City Attorney

APPROVED AS TO CONTENT:

Alejandrina Drew
Director, Arts and Culture Department

EXHIBIT "A"
WORLD ON A STRING INTERNATIONAL GUITAR FESTIVAL
ELLIOT FISK AND PACO PENA
TECHNICAL RIDER
SUNDAY, APRIL 17, 2005

TO BE PROVIDED BY CHAMIZAL NATIONAL MEMORIAL THEATER.

STAGE: 2 straight back arm less chairs placed in center stage. The stage area must be clean and free of nails, all holes/cracks are to be covered, floor needs to be smooth and leveled, immediately prior to rehearsal and performance; must be free of noise. **Temperature must be a minimum of 68 degrees Fahrenheit 3 hours prior to dancers arrival for rehearsals and performances (The system is computerized, therefore, the temperature may vary).**

DRESSING ROOMS: 2 dressing rooms equipped with running water, toilet, and paper towels, as well as two racks in each room for hanging costumes. Sufficient lighting, tables, chairs, and mirrors for artists. Dressing rooms will be locked at all times for insure security. **This is a non-smoking area.**

LIGHTING: General stage lights during rehearsals and performance. A lighting technician will be available to operate the lighting for the theater during rehearsals and performance.

SOUND: A professional quality sound system will be provided. A Peavey 32 channel mixing console (reel-to-reel left and right 7 1/2 track tape deck) CD player, DAT deck, 1 mini-disc recorder and cassette deck. 2 Shure SM 81 microphones. Two stage monitors, located in wings, near bottom of booms in wing # 3 left and right or upstage of cyclorama the monitors are run from the sound booth.

INTERCOM: Will provide Headset Communication from backstage, Dimmer Board, Sound Console and Stage Manager. This intercom will be set up and available for rehearsals.

CHAMIZAL CREW:

1 Light Board Operator
1 Sound Board Operator
1 Stagehands

ACD CREW & STAFF:

2 Stagehands
1 Production Manager
2 ushers (from 6:00p.m. - 10:00p.m.)

Note: This will be the same crew for rehearsal and performance.

SCHEDULE: (The Chamizal National Memorial Theater only operates from 2:30 p.m. to 11:00 p.m.)

Day 1	Sunday, April 17, 2005	Load in and Sound check 3:00 p.m. - 6:30 p.m. Performance 7:30 p.m. - 9:30 p.m.
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TO BE PROVIDED BY ARTS AND CULTURE DEPARTMENT

HOUSE CALL: Program start time may be subject to a ten-minute hold at the discretion of the Arts and Culture Department.

REFRESHMENTS: Bottled water, juices, sodas, milk, coffee, fruit, and necessary supplies (i.e. cups, napkins, paper plates) will be available on the day of the performance at 3:00 p.m. for 2 people.

TRANSPORTATION: A 10-passenger van will be provided and operated by ACD staff from airport, hotel, theater, master class, back to hotel, and airport.

MISCELLANEOUS: Will provide list of hotels. (Fees are all Inclusive agent or company is responsible for airfares, hotel cost, and reservations. Contract and check will be made out to contractor/artist's management).

BACKSTAGE: There will be no access to anyone other than the artists and their company, Chamizal staff, ACD staff, and stagehands.

TO BE PROVIDED BY CONTRACTOR/ARTIST

INSTRUMENTS & CD SALES: Elliot Fisk and Paco Pena will provide all their Instruments. Artists must submit a list of compact disk/cassette sales 90 days prior to the performance.

ITINERARY: Shall be provided 40 days prior to performance including lodging information. A copy of itinerary should be sent to ACD Technical Coordinator of Faxed to 915-541-4902.

PROGRAM: A detailed content of the Program that will be performed in El Paso, Texas needs to be provided with the signed contract or 120 days prior to the performance.

LODGING: Agent and/or Tour Manager Is responsible to make the necessary arrangements to make reservations and pay the fee for the lodging for performers. Arts and Culture Department will provide a list of hotels that honor a discount.

PUBLICITY: Artist has agreed to provide photographs or a demonstration video to assist in the local promotion of Artist's presentation.

Artist hereby grants permission to the City of El Paso to use such materials also in a video collage promoting the variety of arts programming supported by the Arts & Culture Department and the City of El Paso.

Yes: *f*

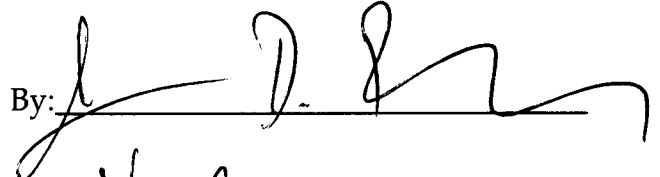
No:

APPROVED AS TO CONTENT:



Director, Arts & Culture Dept.

APPROVED AS TO CONTENT:

By: 

Title: Vice President, ICM Artists